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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 673

ROY CHARLES THOMPSON, Debtor-Bankrupt,
Petitioner (Appellee Below),

vs.

FARMERS BANK OF LOHMAN, Lohman, Missouri,
Respondent (Appellant Below).

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

WILLIAM LEMKE,
Fargo, North Dakota,
Counsel for Petitioner.

S. W. JAMES, Jr.,
Jefferson City, Missouri,
Of Counsel.

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SUPREME COURT OF THE UNITED STATES

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vs.

FARMERS BANK OF LOHMAN, Lohman, Missouri,
Respondent (Appellant Below).

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner respectfully shows to the court:

That your said petitioner is a resident of the County of Cole, in the Western District of Missouri, and debtor-bankrupt under the provisions of Section 75, subsection (s), of the Bankruptcy Act (11 U. S. C. A., Section 203, subsection (s)); that he is aggrieved by the judgment and order of the United States Circuit Court of Appeals for the Eighth Circuit, entered on the 24th day of December, 1943, (R. 21-23), holding that no part of the "rentals" paid by him under the Act during the proceeding "is deductible as 'payments on principal' from the reappraised value of the mortgaged property which the debtor is required to pay under the Act to redeem from

the mortgage", reversing the judgment of the United States District Court for the Western District of Missouri, and your petitioner files this his petition for writ of certiorari to review the proceedings had in the United States Circuit Court of Appeals for the Eighth Circuit.

Your petitioner files herewith a certified transcript of the record in this case, together with supporting brief as required by the rules of this Honorable Court.

I. Summary Statement of Matter Involved.

The debtor filed his petition under Section 75 of the Bankruptcy Act, as amended, and failing to obtain confirmation of his extension and composition proposal, amended his petition and was adjudged bankrupt under subsection (s) of the Act. (R. 2, 7). Both secured and unsecured claims were filed and allowed against the debtor and his estate totalling considerably in excess of the appraised value of his real and personal property, which was all subject to mortgages, and which property, both real and personal, was appraised at the value of $7,296.67. (R. 2-3, 7-8).

The Conciliation Commissioner ordered the debtor to pay the sum of $665.00 per annum as "rental" under the provisions of the Act, which was paid into court each year by the debtor during the three-year period and he retained possession of his property. The total of the "rental" payments aggregated $1,995.00, and after the amounts necessary for payment of taxes and for upkeep of the property had been deducted therefrom, there remained a net balance at the end of the three year stay period in the sum of $1,597.58 undistributed. No part of this fund was distributed to the creditors and applied on their claims during the proceeding. (R. 4, 8).

At the end of the proceeding neither the debtor nor his creditors requested reappraisal of the property, but accepted the appraisal made at the outset of the proceeding, (R.8) and

the debtor pursuant to the order of the Conciliation Commissioner, although objecting, (Supplemental Finding of fact, R. 5-6) deposited in court the full amount of the appraised value of his property, both real and personal, in the sum of $7,296.67, (R. 8) which was borrowed by the debtor for that purpose and did not consist of assets of the estate nor earnings from the property, (R. 4-5) and the Conciliation Commissioner then entered an order turning over to the debtor all of his property free and clear of encumbrances, and ordered distribution of the amount to the secured creditors, who requested confirmance of the order. (R. 3-8).

The Conciliation Commissioner then ordered distribution of the net rental fund in the aforesaid sum of $1,597.58, (Order of Distribution, R. 1-2) less administrative expense, to the unsecured creditors, (R. 3-8). The debtor unsuccessfully objected to this order, contending that the net rentals, after payment of taxes and upkeep of the property, should have been distributed by the Conciliation Commissioner to the secured creditors during the course of the proceeding and applied on their claims as their interests appeared, thus reducing by like amount the appraised value of his property he was required to pay into court at the end of the proceeding to redeem his property under the Act, and that by reason of his compliance with the order requiring him to deposit in court the full appraised value of his property, over his objection, the amount of the net rentals should be refunded to him, (R. 3) and he filed his petition for review of that order by the District Court. (R. 4, 8). The District Court held that the net rentals, after payment of taxes, upkeep and administrative expense, should have been applied to the principal of the secured debts, thus reducing by an equal amount the $7,296.67 the debtor was required to pay into court to redeem his mortgaged property, and entered judgment reversing the order of the Conciliation Commissioner and remanding the proceeding, and in effect directed refund of the net rentals in the

sum of $1,597.58 to the debtor. (R. 6-7, 13). The Farmers Bank of Lohman, as an unsecured creditor, appealed from the judgment of the District Court to the United States Circuit Court of Appeals for the Eighth Circuit, (R. 13-14) and that court on appeal held that no part of the rental payments made by the farmer-debtor after adjudication in bankruptcy and during the three-year period is deductible as "payment on principal" from the reappraised value of the mortgaged property which the debtor is required to pay under the Act to redeem from the mortgage, reversing the judgment of the District Court and remanding the case with instructions to enter judgment and proceed in accordance with the opinion of the Circuit Court of Appeals, (R. 21-23) and your petitioner now asks issuance of a writ of certiorari to review the judgment of that court.

By stipulation of counsel (R. 16) only those parts of the record in this case before the Conciliation Commissioner and the District Court deemed necessary to enable the court on appeal to determine the question presented were certified to the United States Circuit Court of Appeals for the Eighth Circuit, and certified to this Honorable Court in the Transcript of Record filed herewith, and reference herein to matters in the record are as contained in the Finding of Fact (R. 2-4), Supplemental Finding of Fact (R. 5-6), and the Judgment and Opinion of the District Court (R. 6-13).

Question Presented.

The question presented in this case involves the construction of the provisions of Section 75, subsection (s), paragraphs (2) and (3) of the Bankruptcy Act (11 U. S. C. A., Section 203, subsection (s), paragraphs (2) and (3)), and the interpretation of the provisions thereof in accordance with the intent of Congress in enacting the measure. It involves an important question in the administration of that section of the Bankruptcy Act, and is briefly stated as follows:

Is the debtor entitled to have the net balance of the rentals paid into court during the proceeding, after payment of taxes and upkeep on the property, distributed to the secured and unsecured creditors, as their interests appear, and applied on their claims as "payments on principal" under the Act, thus reducing by like amount the appraised or reappraised value of his property he is required to pay into court at the end of the proceeding to redeem his property, (and by reason of having deposited in Court pursuant to the Order of the Conciliation Commissioner, over his objection, the entire appraised value of his property, is he entitled to refund of the net rental fund), or is the net rental fund to be distributed to his creditors and applied on their claims as rental for the use and occupancy of the property during the proceeding, or as interest on his indebtedness during the three-year period, thus requiring the debtor to pay the full appraised value of his property, in addition to the amount of the rental fund paid to his creditors and applied on their claims, in order to redeem his property under the Act?

II. **Reasons Relied on for Allowance of Writ.**

1. That the decision of the United States Circuit Court of Appeals in this case, by holding that no part of the rental payments made by a farmer-debtor after adjudication in bankruptcy during the three-year period is deductible as "payments on principal" from the reappraised value of the mortgaged property which the debtor is required to pay under the Act to redeem from the mortgage, has decided a federal question under the Bankruptcy Act of substance and of general importance to financially distressed farmers seeking relief under the provisions of Section 75, subsection (s), of the Bankruptcy Act (11 U. S. C. A., Section 203, subsection (s)), relating to the construction of that statute, and particularly paragraphs (2) and (3) thereof, and involves an important question of administration of the Act, which is material and

adversely affects the ability of the farmer-debtor to obtain financial rehabilitation contrary to purpose of the Act and the controlling decisions of this court, and which question has not been, but should be, settled by this court.

(a) This court has repeatedly held that the purpose of the aforesaid section of the bankruptcy Act is to provide a broad program for the financial rehabilitation of distressed farmers faced with the disaster of forced sales and an oppressive burden of debt.

> Wright vs. Union Central Life Ins. Co., 311 U. S. 273, 278-279, 61 S. Ct. 196, (2-4), 85 L. Ed. 184 (cases cited therein).

2. That the decision of the United States Circuit Court of Appeals for the Eighth Circuit in this case, by holding that no part of the rental payments made by a farmer-debtor is deductible as "payments on principal" under the Act, as set out in the next preceding paragraph, has decided a federal question under the Bankruptcy Act in a way probably in conflict with applicable decisions of this court.

(a) The United States Circuit Court of Appeals in the opinion in this case has construed the statute contrary to the purpose of the Act, and contrary to the applicable decisions of this court.

> Wright vs. Union Central Life Insurance Company, 311 U. S. 273, 278-279, 61 S. Ct. 196, (2-4) 199, 85 L. Ed. 184 (and cases cited therein).

(b) The United States Court of Appeals in the opinion in this case has construed the provisions of the Act strictly against the farmer-debtor, resolving any and all doubts and ambiguities in the Act in favor of the creditors, contrary to the decisions of this Court.

> Wright vs. Union Central Life Insurance Company, 311 U. S. 273, 278-279, 61 S. Ct. 196, (2-4) 200, 85 L. Ed. 184 (and cases cited therein).

(c) The opinion of the United States Circuit Court of Appeals in this case fails to follow the mandatory provisions of the Act, contrary to the decisions of this court.

Wright vs. Union Central Life Insurance Company, 311 U. S. 273, 278-281, 61 S. Ct. 196, 199-201, 85 L. Ed. 184.

(d) The decision of the United States Circuit Court of Appeals for the Eighth Circuit requires the debtor to pay in to court, to be applied on the claims of his creditors, an amount in excess of the value of his property as determined by the appraisal thereof, in order to redeem the property under the Act, contrary to the decisions of this court.

Wright vs. Union Central Life Insurance Company, 311 U. S. 273, 278-279, 61 S. Ct. 196, 199-200, 85 L. Ed. 184 (and cases cited therein).

3. There is a diversity of opinion among the District Courts as to the construction of the provisions of Section 75, subsection (s), paragraphs (2) and (3) of the Bankruptcy Act (11 U. S. C. A., Sec. 203, subsec. (s), paragraphs (2) and (3), relative to the application of net rental funds as payments on principal under the Act, resulting in confusion and uncertainty in the administration of the Act.

In re Dewey, (D. C. Mo.) not reported, (opinion of District Court reversed in Wilson v. Dewey, 133 F. (2d) 962);
In re Ezell, (D. C. Mo.) 45 F. Supp. 164;
In re Rider, (D. C. Iowa) 40 F. Supp. 882;
In re Thompson, (D. C. Mo.) 48 F. Supp. 557 (opinion of District Court reversed in Farmers Bank of Lohman v. Thompson, not yet reported, R. 21-22).

WHEREFORE, your petitioner prays that a writ of certiorari issue under the seal of this court, directed to the United States Circuit Court of Appeals for the Eighth Circuit, commanding said court to certify and send to this court a full and complete transcript of the record and of the proceedings of

the said United States Circuit Court of Appeals for the Eighth Circuit had in the case numbered and entitled on its docket, No. 12, 538, Farmers Bank of Lohman, Lohman, Missouri, Appellant vs. Roy Charles Thompson, Debtor-Bankrupt, Appellee, to the end that this cause may be reviewed and determined by this court as provided for by the statutes of the United States, and that the judgment herein of the said United States Circuit Court of Appeals for the Eighth Circuit be reversed by this court, and for such further relief as to the court may seem proper.

Dated at the City of Jefferson, in the County of Cole, in the Western District of Missouri, this 31st day of January, 1944.

Respectfully submitted:

WILLIAM LEMKE,
Fargo, North Dakota,
Counsel for Petitioner.

S. W. JAMES, Jr.,
Jefferson City, Missouri,
Of Counsel.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No._____

ROY CHARLES THOMPSON, Debtor-Bankrupt,
Petitioner (Appellee Below),

vs.

FARMERS BANK OF LOHMAN, Lohman, Missouri,
Respondent (Appellant Below).

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

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1. Opinions of Courts Below.

1. The opinion in this cause in the United States District Court for the Western District of Missouri, entitled In re Thompson, is reported in 48 Federal Supplement, at page 557. (R. 7-13).

2. The opinion in this cause in the United States Circuit Court of Appeals for the Eighth Circuit, entitled Farmers Bank of Lohman, Lohman, Missouri, Appellant, vs. Roy Charles Thompson, Debtor-Bankrupt, Appellee, was delivered by the Honorable Seth Thomas, Circuit Judge, on December 24th, 1943, and has not yet been officially reported. (R. 21-22).

II. Jurisdiction.

1. The date of the judgment of the United States Circuit Court of Appeals for the Eighth Circuit to be reviewed by this court was Friday, December 24th, 1943. (P. 22-23).

Satutory Provisions.

2. The statutory provisions which are believed to sustain the jurisdiction of this court are as follows:

Section 75, subsection (n), of the Bankruptcy Act (11 U. S. C. A., Section 203, subsection (n)), as amended, the pertinent parts of which are as follows:

> "* * * In proceedings under this section, except as otherwise provided herein, the jurisdiction and powers of the Courts, the title, powers and duties of its officers, the duties of the farmer, and the rights and liabilities of creditors, and of all persons with respect for the property of the farmer and the jurisdiction of the appellate courts, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the farmer's petition, asking to be adjudged a bankrupt, was filed with the clerk of court or left with the conciliation commissioner for the purpose of forwarding same to the clerk of court."

Section 24, Subsection (c), of the Bankruptcy Act (11 U. S. C. A., Section 47, subsection (c), which is as follows:

> "The Supreme Court of the United States is hereby vested with jurisdiction to review judgments, decrees, and orders of the Circuit Courts of Appeals of the United States and the United States Circuit Court of Appeals for the District of Columbia in proceedings under this title in accordance with the provisions of the laws of the United States now in force or such as may hereafter be enacted."

Section 240a of the Judicial Code of the United States (28 U. S. C. A., Section 347 (a), which is as follows:

> "(a) In any case, civil or criminal, in a circuit Court of appeals, or in the Court of Appeals of the District of Columbia, it shall be competent for the Supreme Court of the United States, upon the petition of any party

thereto, whether Government or other litigant, to require by certiorari, either before or after a judgment or decree of such lower court, that the case be certified to the Supreme Court for determination by it with the same power and authority, and with like effect, as if the cause had been brought there by unrestricted writ of error or appeal."

3. Statement Showing Jurisdiction of the Court.

This is a controversy arising in a bankruptcy proceeding under Section 75, subsection (s), of the Bankruptcy Act (11 U. S. C. A. Section 203, subsection (3)), involving the construction of that statute, and particularly paragraphs (2) and (3) thereof. The question involved in this case (Question Presented, Petition, P. 4) materially affects the rights of the farmer-debtor and his ability to obtain financial rehabilitation under the Act, and thereby raises the question of interpretation of the provisions of the Act by this Court in accordance with the purpose of the Act and the intent of Congress in enacting the statute into law.

The United States Courts have exclusive jurisdiction of matters under the Bankruptcy Act. (Const. of United States, Art. 1, Sec. 8; Sec. 2 of Bankruptcy Act, (11 U. S. C. A., Sec. 11)). Under the provisions of Section 75, subsection (n), of the Bankruptcy Act (11 U. S. C. A. Sec. 203, subsection (n)), supra. the United States Courts have exclusive jurisdiction of the farmer-debtor and all of his property from the date of the filing of his petition under the Act until the termination of the proceedings. Under the provisions of Section 24, subsection (c) of the Bankruptcy Act (11 U. S. C. A., Section 47, subsection (c)) supra, and Section 240(a) of the Judicial Code (28 U. S. C. A., Section 347 (a)) supra, this court has jurisdiction to review the decision of the United States Circuit Court of Appeals for the Eighth Circuit in this cause, for the reasons set forth in the "Reasons Relied on for Allowance of Writ", Point II, at pages 5-7, of the Petition for Writ of Cer-

tiorari in this cause, under the provisions of Rule 38 of this court.

The Judgment of the United States Circuit Court of Appeals in this cause was rendered on the 24th day of December, 1943, and within three months prior to the date of filing of petitioner's Petition for Writ of Certiorari in this cause. (R. 22-23).

4. The cases believed to sustain the jurisdiction of this court are as follows:

Borchard vs. California Bank (Certiorari granted, 309 U. S. 648, 60 S. Ct. 721) 310 U. S. 311, 312, 60 S. Ct. 957, 958-959, 84 L. Ed. 1222;

John Hancock Mutual Life Insurance Company vs. Bartels (Certiorari granted, 307 U. S. 617, 59 S. Ct. 794) 308 U. S. 180, 181, 60 S. Ct. 221, 222, 84 L. Ed. 176;

Union Joint Stock Land Bank vs. Byerly (Certiorari granted, 309 U. S. 643, 60 S. Ct. 467) 310 U. S. 1, 4-5, 60 S. Ct. 773, 775;

Wright vs. Logan (Certiorari granted, 314 U. S. 592, 62 S. Ct. 84) 315 U. S. 139, 141, 62 S. Ct. 508, 509;

Wright vs. Union Central Life Insurance Co. (Certiorari granted, 310 U. S. 618, 60 S. Ct. 1078) 311 U. S. 273, 275-276, 61 S. Ct. 196, 198, 84 L. Ed. 184.

III. Statement of the Case.

A statement of the case has already been given by your petitioner herein under Point I in the preceding petition, at pages 1-4, which is hereby adopted and made a part of this brief.

IV. Specification of Errors.

The United States Circuit Court of Appeals for the Eighth Circuit erred in reversing the decision of the District Court, and in holding that no part of the rental payments made by the farmer-debtor after adjudication in bankruptcy and during the three-year period is deductible as "payments on prin-

cipal" from the reappraised value of the mortgaged property which the debtor is required to pay under the Act to redeem from the mortgage, for the following reasons:

1. The Circuit Court of Appeals in its opinion has erroneously construed the provisions of Section 75, subsection (s), of the Bankruptcy Act (11 U. S. C. A., Section 203, subsection (s) strictly against the farmer-debtor, and has resolved all doubts and ambiguities in the Act in favor of the creditors.

2. The Circuit Court of Appeals has erroneously construed the provisions of Section 75, subsection (s), of the Bankruptcy Act (11 U. S. C. A., Section 203, subsection (s)) contrary to the purpose for which the statute was enacted into law.

3. The Circuit Court of Appeals has erroneously failed and refused to follow the mandatory provisions of Section 75, subsection (s), paragraphs (2) and (3) of the Bankruptcy Act (11 U. S. C. A., Section 203, subsection (s), paragraphs (2) and (3)).

4. The opinion of the Circuit Court of Appeals is in error because it requires the farmer-debtor to pay into court on the claims of his creditors an amount in excess of the value of his property as determined by the appraisal thereof in order to redeem his property, contrary to the provisions of the Act.

5. The Circuit Court of Appeals has erroneously determined that the amount of the net rentals deposited in court by the farmer-debtor during the proceeding, after deducting the amounts for taxes and upkeep of the property, is for the use and occupancy of the property during the proceeding, and may be used for the payment of interest accruing on the indebtedness during the three-year period, contrary to the provisions of Section 75, subsection (s), paragraphs (2) and (3)

of the Bankruptcy Act (11 U. S. C. A., Section 203, subsection (2), paragraphs (2) and (3)).

V. **The Provisions of Section 75, Subsection (s) of the Bankruptcy Act (11 U. S. C. A., Section 203, subsection (s)) which are involved in this Proceeding are as follows:**

"(2) * * * During such three years the debtor shall be permitted to retain possession of all or any part of his property, in the custody and under the supervision and control of the court, **provided he pays a reasonable rental semi-annually for that part of the property of which he retains possession. The first payment of such rental shall be made within one year of the date of the order staying proceedings, the amount and kind of such rental to be the usual customary rental in the community where the property is located, based upon the rental value, net income, and earning capacity of the property. Such rental shall be paid into court, to be used, first, for payment of taxes and upkeep of the property, and the remainder to be distributed among the secured and unsecured creditors, and applied on their claims, as their interests may appear. The court, in its discretion, if it deems it necessary to protect the creditors from loss by the estate, and/or to conserve the security, * * * may, in addition to the rental, require payments on the principal due and owing by the debtor to the secured or unsecured creditors, as their interests may appear, in accordance with the provisions of this title,** and may require such payments to be made quarterly, semiannually or annually, not **inconsistent with the protection of the rights of the creditors and the debtor's ability to pay, with a view to his financial rehabilitation."**

"3" At the end of three years, or prior thereto, the debtor may pay into court the amount of the appraisal of the property of which he retains possession, including the amount of encumbrances on his exemptions, up to the amount of the appraisal, less the amount paid on principal: Provided, that upon request of any secured or unsecured creditor or upon request of the debtor, the court

shall cause a reappraisal of the debtor's property, or in its discretion set a date for hearing, and after such hearing, fix the value of the property in accordance with the evidence submitted, **and the debtor shall then pay the value so arrived at into court, less payments made on the principal, for distribution to all secured and unsecured creditors, as their interests may appear, and thereupon the court shall, by an order, turn over full possession and title of said property, free and clear of encumbrances to the debtor:** * * *" (Emphasis supplied).

VI. Argument

Summary of Argument

1. When the aforesaid provisions of Section 75 of the Bankruptcy Act are construed under and in accordance with the recognized rules of construction of such statutes and the applicable decisions of this court, in harmony with the purpose of the Act and the intent of Congress in enacting the measure into law, it is conclusive that that the rentals paid by the farmer-debtor in excess of the amounts required for taxes and upkeep of the property must be applied on the claims of creditors as "payments on principal", thus reducing by like amount the appraised value of the property the farmer-debtor is required to pay into court to redeem it.

2. The opinion of the Circuit Court of Appeals fails to construe the provisions of the Act in accordance with the recognized rules of construction of statutes, and the purpose for which the Act was enacted into law, and it is contrary to the provisions of the Act and the applicable decisions of this court.

3. The opinion of the District Court correctly interprets the statute under the applicable decisions of this court and the recognized rules of construction.

4. Conclusion.

I.

THE ACT MUST BE CONSTRUED IN ITS ENTIRETY, INTERPRETING THE MEANING OF DOUBTFUL WORDS USED THEREIN IN ACCORDANCE WITH THE INTENT OF CONGRESS AND THE PURPOSE OF THE ACT, AND LIBERALLY IN FAVOR OF THE FARMER-DEBTOR

The Provisions of the Act to Be Interpreted.

The only ambiguity or uncertainty in paragraphs (2) and (3), of subsection (s) of the Act, which gives rise to the question presented in this case, is whether or not Congress intended that the remainder of the rental payments, after payment of taxes and upkeep on the property, distributed to and applied on the creditor's claims as their interests appear under the provisions of said paragraph (2), shall constitute "payments on principal" to be deducted from the appraised value of the property to be paid into Court by the farmer-debtor under said paragraph (3) of subsection (s) of the Act. If such payments are to be interpreted as "payments on principal" under the Act, then the farmer-debtor is required to pay into Court on the claims of his creditors during the proceeding, only the value of his property as determined by the appraisal thereof in order to redeem his property under the Act. We respectfully submit that such is the correct interpretation of the Act under the recognized rules of construction of such statutes and the applicable decisions of this Court, in accordance with the purpose of the Act and the intent of Congress in enacting the measure into law.

Farmer-Debtor Required to Surrender all of His Property to the Court, and Creditors are Limited in Their Recovery to the Value Thereof.

One of the first principles to be noted in interpreting the Act is that subsection (n) requires the farmer to surrender all

of his property, wherever located, to the absolute and exclusive jurisdiction of the bankruptcy court, for the purpose of paying his debts, and for the sake of uniformity. (Sec. 75, subsection (n), of the Bankruptcy Act, (11 U. S. C. A., Sec. 203, subsection (n); Kalb v. Feuerstein, 308 U. S. 433, 442, 60 S. Ct. 343, 347.)

This Court has repeatedly held that the rights of creditors under the Act are protected only to the extent of the value of the farmer-debtor's property, with the priorities and liens of secured creditors being preserved, which negatives the theory that the farmer-debtor is required to pay the amount of the net rental payments, in excess of the amounts required for taxes and upkeep, on the claims of his creditors in addition to the full appraised value of his property.

> "The scheme of the statute is designed to provide an orderly procedure so as to give whatever relief may properly be afforded to the distressed farmer-debtor, **while protecting the interests of his creditors by assuring the fair application of whatever property the debtor has to the payment of their claims, the prorities and liens of secured creditors being preserved.** (Emphasis supplied.) John Hancock Mutual Life Ins. Co., v. Bartels, 308 U. S. 180, 187, 60 S. Ct. 221, 223.
>
> **"Safeguards were provided to protect the rights of secured creditors, throughout the proceedings to the extent of the value of the property.** John Hancock Mutual Life Ins. Co. v. Bartels, supra, 308 U. S. at pages 186, 187, 60 S. Ct., at pages 224, 84 L. Ed. 176; Borchard v. California Bank, supra, 310 U. S. at page 317, 60 S. Ct. page 960, 85 L. Ed. 1222. There is no constitutional claim of the creditor to more than that. * * * Under our construction, however, the debtor will be given the benefit of an express mandate of the Act. And the creditor will not be deprived of the assurance **that the value of the property will be devoted to the payment of its claims."** (Emphasis supplied.) Wright v. Union Central Life Ins. Co., 311 U. S. 273, 278, 61 S. Ct. 196, 199-200, 84 L. Ed. 184.

The Purpose of the Act Is to Rehabilitate the Farmer-Debtor Financially

The purpose of the Act, which must be considered in the interpretation thereof, is to enable the farmer-debtor to obtain financial rehabilitation, by paying into Court the fair value of his property during the three year stay period, in addition to the amounts required for taxes and upkeep on the property, rather than to permit the liquidation of his assets and the destruction of the farming industry during a national economic depression. This Court in recognization of the purpose of the Act has in many cases held:

> "This Act provided a procedure to effectuate a broad program of rehabilitation of distressed farmers faced with the disaster of forced sales and an oppressive burden of debt. Wright v. Union Central Life Ins. Co., supra; John Hancock Mutual Life Ins. Co. v. Bartels, supra; Kalb v. Feuerstein, 308 U. S. 433, 60 S. Ct. 343, 84 L. Ed. 370." Wright v. Union Central Life Ins. Co. 311 U. S. 273, 278, 61 S. Ct. 196, 199, 84 L. Ed. 184.

and this Court has recently again expressed this purpose in the following language:

> "The section is a manifestation of the enlarged conception of the bankruptcy power as extending not alone to a seizure of an insolvent debtor's assets in the interest of an unpartial application of them to his creditor's demands, but also as a means of relieving his distress and rehabilitating him financially while rendering his creditors all for which they may reasonably hope." Harris v. Zion Savings Bank and Trust Co. 317 U. S. 447, 451, 63 S. Ct. 354, 357.

The Act Must Be Liberally Construed in Favor of the Farmer-Debtor.

Further, this Court has repeatedly held that the Act must be liberally construed in favor of the farmer-debtor, resolving

all doubts and ambiguities in the Act in his favor, in order to effectuate the purpose for which the Act was enacted into law. This court, in Wright vs. Union Central Life Ins. Co. 311 U. S. 273, at pages 278-279, 61 S. Ct. 196, at page 200, 84 L. Ed. 184, has said:

> "And so long as that right is protected the creditor is in no position to insist that doubts or ambiguities in the Act be resolved in its favor and against the debtor. **Rather, the Act must be liberally construed to give the debtor the full measure of the relief afforded by Congress** (John Hancock Mutual Life Ins. Co. v. Bartels, supra; Kalb v. Feuerstein, supra), lest its benefits be frittered away by narrow formalistic interpretations which disregard the spirit and letter of the act." (Emphasis supplied).

Interpretation of Doubtful, Uncertain and Ambiguous Words.

Therefore, it appears obvious that Congress did not use the term "rental" in paragraph (2) of subsection (s) of the Act in the usual and restricted sense in which that term is ordinarily used, that is, for the use and occupancy of the property, but used the term in a broader sense to designate that the farmer-debtor be required to pay into court each year during the proceeding an amount equivalent to the usual and customary rental on the property in the locality in which it is located. Our interpretation is further borne out by the fact that Congress designated the exact purposes for which the amount so paid as "rental" is to be used; first, for the payment of taxes and upkeep on the property, and the balance distributed among the secured and unsecured creditors, as their interests shall appear, and applied on their claims. That Congress intended that the amounts of the rental payments applied on the claims of the creditors be regarded as "payments on principal", and as such deducted from the amount of the appraised or reappraised value of the property the farmer debtor is required to pay to redeem his property, is evidenced by the fur-

ther provisions of said paragraph (2) of said subsection (s), as follows:

> " * * * The Court, in its discretion, * * * may, **in addition to the rental, require payments on the principal** due and owing by the debtor to the secured or unsecured creditors, as their interests may appear, * * *" (Emphasis supplied).

It is a cardinal rule of construction of statutes that while the meaning of a word in a statute will be determined from the character of its use, words in common use are to be given their natural, plain, ordinary and commonly understood meaning, in the absence of any statutory or well established technical meaning, unless it is plain from the statute that a different meaning was intended, or unless such construction would defeat the manifest intention of the legislature. Words are to be interpreted with due regard to the subject matter of the statute and its purpose and if necessary, to give effect to legislative intent, to extend or restrict the ordinary and usual meaning of words. The meaning of doubtful words must be determined by the sense used by the legislature without regard to their primary meaning. Uncertain or ambiguous words are to be construed as far as possible to produce a reasonable result in harmony with the purpose of the Act. (59 Corpus Juris, Statutes, Sec. 577-3, pp. 974-979).

A careful reading of paragraphs (2) and (3) of subsection (s) of the Act, under the aforesaid authorities will unquestionably show that Congress intended that the farmer-debtor be required to pay into court each year during the proceeding an amount equivalent to the usual and customary rental for the property in its locality to be used, first, for the payment of taxes and upkeep on the property, to insure that the taxes would not become delinquent and that the property would be kept in reasonable repair, and the balance applied on the claims of the creditors to provide them with a partial dividend thereon each year during the proceeding, and the amount so

credited to be deducted from the appraised value of the property the debtor is required to pay into court to redeem his property, thus assisting the farmer-debtor to obtain financial rehabilitation, and to protect the interests of his creditors to the extent of the value of the property.

2.

The Opinion of the Circuit Court of Appeals Examined.

When the opinion of the Circuit Court of Appeals in this case is examined in connection with the provisions of the Act under the aforesaid authorities, taking into consideration the purpose of the Act, it will be readily apparent that the opinion does not correctly interpret the provisions of the Act and is contrary to the applicable decisions of this court.

The opinion of the appellate court in this case is based upon the opinion of that court in the case of Wilson v. Dewey, reported in 133 F. 2nd, at page 962, decided by that court on March 4th, 1943, and the court therein states that the case of Wilson v. Dewey, supra, involves the identical issues involved in this case, and holds as follows: (R. p. 22).

> "This court there held that no part of the rental payments made by a farmer debtor after an adjudication in bankruptcy during the three-year period is deductible as "payments on principal" from the reappraised value of the mortgaged property which the debtor is required to pay under the Act to redeem from the mortgage. That decision is controlling in this case, and requires a reversal of the judgment appealed from."

And it is therefore necessary to resort to the opinion in that case in order to properly review the opinion of the appellate court in this case.

The opinion in the case of Wilson v. Dewey, supra, is based upon the opinion of District Judge Dewey in the case of In re Rider, 40 F. Supp. 882, which is quoted extensively in the

opinion in the Dewey case (Wilson v. Dewey, 133 F. 2d 965-966).

In the opinion in Wilson v. Dewey, supra, at pages 965-966, the appellate court holds:

> "The court ordered the sum of $2,389.02 be refunded to the debtor on the theory that it was a payment on the principal and as such should be deducted from the re-appraised value. **But this was paid by the debtor as rental for the use and occupancy of the property, not as payment on principal.** In fact **the debtor made no direction whatever with reference to the application of the fund other than it should be received in payment of the rental."** (Emphasis supplied.)
>
> **"The debtor occupied the premises and, hence, received full value for the rental paid. If this $2,389.02 is refunded to him, however, he will not have paid the rental required for the occupancy and use of the premises** during the three years in question. This question was considered by Judge Dewey in In re Rider, 40 F. Supp. 882, 885. In the course of his opinion Judge Dewey said: **"Nor can I agree with counsel that these payments for rents,** both to the state receiver and to the receiver in this proceeding, **were payments on the principal referred to in Subsection, sub. s (3), as the quotation 'less the amount paid on principal' undoubtedly refers to the additional amount which may have been required by the Conciliation commissioner in addition to the rental** to be paid on the principal as provided in Subsection, sub. s (2). **Payments of annual rentals were not payments on principal but were to be applied on the indebtedness and might well have been applied on the interest instead of on the principal** by the secured creditor as the annual interest indebtedness was greater than the amount of the rentals paid. See Sexton v. Dreyfus, 219 U. S. 338, 31 S. Ct. 256, 55 L. Ed. 244 * * *"
>
> We are in accord with this construction of the act." (Emphasis supplied.)

Obviously the opinion of the appellate court in holding that the rental paid by the farmer-debtor is for the use and occupancy of the premises, and inferring that the farmer-debtor is required under the Act to make some "direction" as to the application of the rental funds, is reading something into the Act which is not there, and cannot be inferred from a reasonable interpretation of the provisions of the Act. The Act does not provide that the debtor shall pay for the use and occupancy of the property. The designation in the Act as to the application of the rental funds disputes that theory, as well as the theory that the debtor is required to make any "direction" relative to the application of the fund. The reasoning of the court in its opinion to the effect that the debtor having occupied the premises received full value for the rental paid, and if the amount be refunded to him he will not have paid the rental required for the use and occupancy of the property, is based upon a strict construction of the Act against the farmer-debtor and fails to take into consideration that the net rentals were applied to the claims of the creditors, and not having been deducted from the appraised value of the property in compliance with the Act, the debtor was required to pay into court on the claims of his creditors to redeem his property a total of that amount in excess of the amount required under the Act.

The opinion of the District Court in In re Rider, 40 F. Supp. 882, 885, cited with approval and relied on in Wilson v. Dewey, supra (R. 22), is based upon conjecture and without any attempt to construe the provisions of the Act in harmony with its purpose, or to follow the applicable decisions of this court. The court therein holds that although the net rentals were applied on the indebtedness, they were not payments on principal, and "might well have been applied on interest as well as principal", citing Sexton v. Dreyfus, 219 U. S. 338, 31 S. Ct. 256, 55 L. Ed. 244, in support thereof, which holds that a secured creditor in a regular bankruptcy proceeding may claim

interest on his secured claim to the date of payment if a sufficient amount is realized from the sale of the security, but that case is not authority for the court in a proceeding under Section 75 of the Bankruptcy Act to require the debtor to pay on the claims of his creditors an amount in excess of the value of his property, contrary to the more recent decisions of this court interpreting that section of the Bankruptcy Act. (Wright v. Union Central Life Ins. Co., 311 U. S. 273, 278-279, 61 S. Ct. 196, 199-200, and cases cited therein).

The opinion of the appellate court in this case, and in the case of Wilson v. Dewey, supra, and the opinion of the District Court in In re Rider, supra, fail to interpret the provisions of the Act in a manner to produce a reasonable result in harmony with the other provisions thereof and the purpose of the act, which is the financial rehabilitation of the debtor, by permitting him to pay the value of his property to his creditors within the three year period provided in the Act instead of liquidating his property, (Wright v. Union Central Life Insurance Co., 311 U. S. 273, 278-279, 61 S. Ct. 196, 200) as we believe it apparent that a farmer-debtor suffering serious financial distress during a national economic depression would be unable to pay the usual and customary rental on his property during the proceeding and by the end of the three year period financially rehabilitate himself to the extent that he would be able to then pay the full appraised value of his property in addition to the rental paid. In each of these cases the court has construed the Act strictly against the farmer-debtor, resolving all doubts and ambiguities therein in favor of the creditors and against the farmer-debtor, contrary to the applicable decisions of this court (Wright v. Union Central Life Ins. Co., 311 U. S. 273, 278-279, 61 S. Ct. 196, 200), requiring the farmer-debtor to pay into court on the claims of his creditors the amount of the net rentals in excess of the

value of his property, contrary to the provisions of the Act and the applicable decisions of this court. (John Hancock Mutual Life Ins. Co. v. Bartels, 308 U. S. 180, 187, 60 S. Ct. 221, 223; Wright v. Union Central Life Ins. Co., 311 U. S. 273, 278, 61 S. Ct. 196, 199-200).

The opinion of the appellate court in this case is therefore erroneous and should be reversed.

3.

The Opinion of the District Court.

The District Court in its opinion in this case (In re Thompson, 48 F. Supp. 557, R. 7-13) has correctly construed the provisions of paragraphs (2) and (3), of subsection (s) of the Act in harmony with the Act in its entirety and the applicable decisions of this court, interpreting the terms used therein in accordance with the recognized rules of construction, and construing the act liberally in favor of the farmer-debtor in order to produce a reasonable result in harmony with the purpose of the Act, the financial rehabilitation of the farmer-debtor. The court has further followed the applicable decisions of this court in limiting the recovery of the creditors to the value of the debtor's property, and has correctly determined that the net rentals under the facts in this case should have been applied on the principal of the secured debts, thereby protecting the priorities and liens of the secured creditors as required by the Act and the decisions of this court, and that the farmer-debtor should have been required to pay into court to redeem his property only the difference between the amount of the net rentals, less costs of administration, and the appraised value of the property, thus entitling the farmer-debtor to refund of the amount of the net rentals.

4.

Conclusion.

It is therefore respectfully submitted that this case is one calling for the exercise by this court of its supervisory powers, by granting a writ of certiorari and thereafter reviewing and reversing the decision of the United States Circuit Court of Appeals for the Eighth Circuit.

WILLIAM LEMKE,
Fargo, North Dakota
Counsel for Petitioner.

S. W. JAMES, Jr.
Jefferson City, Missouri.
Of Counsel.

(22)

FEB 29 1944
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 673

ROY CHARLES THOMPSON, Debtor-Bankrupt,
Petitioner (Appellee Below),

vs.

FARMERS BANK OF LOHMAN, Lohman, Missouri,
Respondent (Appellant Below).

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

HARRY G. WALTNER, JR., ESQ.,
Jefferson City, Missouri,
Counsel for Respondent.

SAM BUSHMAN, ESQ.,
Jefferson City, Missouri,
Of Counsel.

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SUPREME COURT OF THE UNITED STATES

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No._____

ROY CHARLES THOMPSON, Debtor-Bankrupt,
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vs.

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Respondent (Appellant Below).

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent says that the petition for certiorari filed in this case ought not to be considered by the Court, or if considered, should be denied, because the petition itself does not contain a statement particularly disclosing the basis upon which it is contended that this Court has jurisdiction to review the judgment in question, as prescribed by Rule 38 of this Court; and the petition does not contain a statement referring distinctly to the statutory provision believed to sustain the jurisdiction as prescribed by Rule 12, par. 1, of the rules of this Court; and

Because the petitioner has not presented a separate typewritten statement particularly disclosing the basis upon which it is contended that this Court has jurisdiction to review the judgment of the Court below as prescribed by Rule 12, par. 1 of this Court.

Rule 38, par. 2, of this Court provides: "The petition shall contain a summary and short statement of the matter involved; a statement particularly disclosing the basis upon which it is contended that this Court has jurisdiction to re-

view the judgment or decree in question (see Rule 12, par. 1) * * *."

Rule 12, par. 1, of the Court, among other things, provides, "there shall be presented by the appellant a separate typewritten statement particularly disclosing the basis upon which it is contended that this Court has jurisdiction upon appeal to review the judgment or decree in question. The statement shall refer distinctly (a) to the statutory provision believed to sustain the jurisdiction, * * *."

Rule 12 of the Court refers to the jurisdictional statement in the case of an appeal and prescribes what the statement shall contain. Rule 38 prescribes that a petition shall be filed when making application for certiorari and prescribes that a statement particularly disclosing the basis upon which it is contended this Court has jurisdiction to review the judgment or decree and in that particular refers to Rule 12, par. 1. Indicating that the petition must meet the requirements of Rule 12, par. 1, one of which is that the statement shall refer distinctly to the statutory provision believed to sustain the jurisdiction.

The petition in this case does not meet the requirements of Rule 38 or of Rule 12. It is true that in his brief petitioner makes a statement of jurisdiction and refers to statutory provisions but we respectfully submit that this does not comply with the rules and since certiorari is not a writ of right and since failure to comply with the requirements of the rules is sufficient reason for denying the petition, according to Rule 38, par. 2, the writ in this case should be denied.

Respectfully submitted,

HARRY G. WALTNER, JR.,
Jefferson City, Missouri,
Counsel for Respondent.

SAM BUSHMAN,
Jefferson City, Missouri,
Of Counsel.